

House Bill 1421 (AS PASSED HOUSE AND SENATE)

By: Representatives Fleming of the 117th, Ralston of the 7th, and Hatfield of the 177th

A BILL TO BE ENTITLED

AN ACT

To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, so as to change provisions relating to notices and pleadings in criminal proceedings; to change provisions relating to demand for trial and announcement of readiness for trial; to require a demand for speedy trial be filed and served as a separate document and labeled as a demand for speedy trial; to change provisions relating to demand for speedy trial and service of such demand; to provide for procedures relating to demand for speedy trial in capital cases; to correct cross-references; to amend Code Section 38-3-62 of the Official Code of Georgia Annotated, relating to suspension or tolling of deadlines and time schedules in the event of a judicial emergency, so as to correct a cross-reference; to provide for other related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by striking Code Section 17-7-170, relating to demands for trial, and inserting in lieu thereof the following:

"17-7-170.

(a) Any ~~person~~ defendant against whom a true bill of indictment or an accusation is filed with the clerk for an offense not affecting the ~~person's~~ defendant's life may enter a demand for speedy trial at the court term at which the indictment or accusation is filed or at the next succeeding regular court term thereafter; or, by special permission of the court, ~~he or she~~ the defendant may at any subsequent court term thereafter demand a speedy trial. In either case, the demand for speedy trial shall be filed with the clerk of court and served upon the prosecutor and upon the judge to whom the case is assigned or, if the case is not assigned, upon the chief judge of the court in which the case is pending. A demand for speedy trial filed pursuant to this Code section shall be filed as a separate, distinct, and individual

document and shall not be a part of any other pleading or document. Such demand shall
clearly be titled 'Demand for Speedy Trial'; reference this Code section within the pleading;
and identify the indictment number or accusation number for which such demand is being
made. The demand for speedy trial shall be binding only in the court in which the demand
for speedy trial is filed, except where the case is transferred from one court to another
 without a request from the defendant.

(b) If the ~~person~~ defendant is not tried when the demand for speedy trial is made or at the
 next succeeding regular court term thereafter, provided that at both court terms there were
 juries impaneled and qualified to try the ~~person~~, defendant, the ~~person~~ defendant shall be
 absolutely discharged and acquitted of the offense charged in the indictment or accusation.
 For purposes of computing the term at which a misdemeanor must be tried under this Code
 section, there shall be excluded any civil term of court in a county in which civil and
 criminal terms of court are designated; and for purposes of this Code section it shall be as
 if such civil term was not held.

(c) Any demand for speedy trial filed pursuant to this Code section shall expire at the
 conclusion of the trial or upon the defendant entering a plea of guilty or nolo contendere.

(d) If a case in which a demand for speedy trial has been filed, as provided in this Code
 section, is reversed on direct appeal, a new demand for speedy trial ~~must~~ shall be filed
 within the term of court in which the remittitur from the appellate court is received by the
 clerk of court or at the next succeeding regular court term thereafter.

(e) If the case in which a demand for speedy trial has been filed as provided in this Code
 section results in a mistrial, the case shall be tried at the next succeeding regular term of
 court."

SECTION 2.

Said title is further amended by striking Code Section 17-7-171, relating to time for demand
 for trial in capital cases, and inserting in lieu thereof the following:

"17-7-171.

(a) Any person accused of a capital offense may enter a demand for speedy trial at the term
 of court at which the indictment is found or at the next succeeding regular term thereafter;
 or, by special permission of the court, ~~he~~ the defendant may at any subsequent term
 thereafter demand a speedy trial. The demand for speedy trial shall be filed with the clerk
of court and served upon the prosecutor and upon the judge to whom the case is assigned
or, if the case is not assigned, upon the chief judge of the court in which the case is
pending. A demand for trial filed pursuant to this Code section shall be filed as a separate,
distinct, and individual document and shall not be a part of any other pleading or document.

1 Such demand shall clearly be titled 'Demand for Speedy Trial'; reference this Code section
2 within the pleading; and identify the indictment number or accusation number for which
3 such demand is being made. The demand for speedy trial shall be binding only in the court
4 in which such demand is filed, except where the case is transferred from one court to
5 another without a request from the defendant.

6 (b) If more than two regular terms of court are convened and adjourned after the term at
7 which the demand for speedy trial is filed and the defendant is not given a trial, then ~~he~~ the
8 defendant shall be absolutely discharged and acquitted of the offense charged in the
9 indictment, provided that at both terms there were juries impaneled and qualified to try the
10 defendant and provided, further, that the defendant was present in court announcing ready
11 for trial and requesting a trial on the indictment.

12 (c) In cases involving a capital offense for which the death penalty is sought, if a demand
13 for speedy trial is entered, the counting of terms under subsection (b) of this Code section
14 shall not begin until the convening of the first term following the completion of pretrial
15 review proceedings in the Supreme Court under Code Section 17-10-35.1."

16 SECTION 3.

17 Said title is further amended by striking Code Section 17-7-172, relating to requirement of
18 announcement of readiness for trial prior to announcement by defendant, and inserting in lieu
19 thereof the following:

20 "17-7-172.

21 The state shall be required in every case to announce ready or not ready for trial, except in
22 those cases where the defendant is entitled by law to demand a speedy trial, before the
23 defendant shall be called on to make such announcement."

24 SECTION 4.

25 Said title is further amended by striking Code Section 17-8-21, relating to when a showing
26 for a continuance is required of the state, and inserting in lieu thereof the following:

27 "17-8-21.

28 In all cases in which the defendant cannot, according to law, demand a speedy trial, a
29 continuance shall not be granted to the state, except upon a reasonable showing therefor."

30 SECTION 5.

31 Said title is further amended by striking subsection (c) of Code Section 17-8-31, relating to
32 grounds for granting of continuances, and inserting in lieu thereof the following:

1 "(c) In cases in which a demand for speedy trial has been filed in accordance with Code
2 Section 17-7-170 or 17-7-171, the court shall grant the continuance if the party moving for
3 a continuance pursuant to subsection (b) of this Code section establishes by testimony,
4 affidavits, or other evidence that:

5 (1) The witness is material and necessary;

6 (2) The witness is located outside the territorial limits of the state;

7 (3) The party has submitted a request to the proper military authorities for the testimony
8 of the witness in accordance with Section 301 of Title 5 of the United States Code and
9 federal regulations or directives issued by the armed forces pursuant thereto; and

10 (4) The witness will not be available within the time limits prescribed by Code Section
11 17-7-170 or 17-7-171.

12 This continuance shall toll the running of the demand for speedy trial and shall continue
13 the trial until the witness is released from active duty or the military makes the witness
14 available to testify. If the witness only becomes available to testify within the last two
15 weeks of the term of court in which the case must be tried, the case may be tried at the next
16 succeeding term of court."

17 **SECTION 6.**

18 Code Section 38-3-62 of the Official Code of Georgia Annotated, relating to suspension or
19 tolling of deadlines and time schedules in the event of a judicial emergency, is amended by
20 striking paragraph (3) and inserting in lieu thereof the following:

21 "(3) The time within which to try a case for which a demand for speedy trial has been
22 filed;"

23 **SECTION 7.**

24 All laws and parts of laws in conflict with this Act are repealed.